Previous references.

File No. 119 of 1904-05

1904

(III-Courts.)

Later references.

GENERAL AND REVENUE SECRETARIAT.

Serial Nos. 1 and 2

PART B FOR November 1904

SUBJECT.

Memorial addressed to H. H. the Maharaja by the appellants in Criminal case No. 216 of 03-04 on the file of the Chief Court

1.		FILE No. 119 of ~~1903-04~~ 1904-05.
		Memorial addressed to H. H. the Maharaja by 1 Gows Sab, 2 Abdul Kareem, 3 Abdul Gaffer, and 4 Abdul Rahim, appellants in Criminal Appeal Case No. 216 of 1903-04, on the file of the Chief Court.
	1	From the Registrar of the Chief Court, No. 2327—131, dated the 14th October 1904. Forwards the memorial and states that the Sessions Judge of Bangalore has been asked to suspend the sentence of death passed on the 1st two.
	2	To the Registrar of the Chief Court, No. J. 1302—C. 119, dated the 21st November 1904. Forwards for information of the Judges of the Chief Court and for communication to the memorialists, copies of order passed by His Highness the Maharaja declining to interfere. Enclosure, entire records.
2.		

G. R. S. 58.

G.R.S. 11] 1904.05

GENERAL AND REVENUE SECRETARIAT.

(Courts)

NOTES.

File No. 119

FILE HEADING.

Memorial addressed to H.H. the Maharajah by 1. Gopal Lal 2 Abdul Karim & Abdul Jaffer & 3) Abdul Rahim appellants in Cr. Appeal. No. 1604/05 on the file of the Chief Court

From

The Registrar of the Chief Court

No. 2827/131 Dated 14/10/1904 Received 15/10/1904

Diary No. 1834	Enclos. 2 in pl + 1 Spare Copies. —	Serial No. 1

BRIEF ABSTRACT OF LETTER.

Forwards the memorial & states that the Sessions Judge of Bangalore has been asked to suspend the sentence of death passed on the 1st two appellants.

NOTES AND ORDERS.

Record with B 22-11-04

Received

Put for orders. The prisoners (1 & 2 Mk) have been sentenced to be hanged on the 27th October 1904. The records are enclosed in a separate packet.

15/10/04 15-10-04

P. J. 20

NOTES—First sheet.

MGCPB—5,000—18-5-04

General and Revenue Secretariat.

File No. 119 of 1904-05

Serial No.

2 Nine persons, including the four memorialists, were committed to the Sessions for trial on the following facts.

3 On the evening of the 7th January 1904, one Obalappa, while returning from a cock-fight at Raginakanahalli, was waylaid by a party of Mahommadans near a place called Kanmada ghât, and clubbed to death. Four persons were eye-witnesses to the attack: namely, Obalappa's son Ramappa and his dependant Venkatappa, a Mahomedan boy named Hyder Sab, and a Meda boy named Venkatigadoo. Ramappa and Venkatappa with the Meda boy ran back to the cock-fighting place (abt 3 furlongs from the scene), and brought a number of persons to the scene; but by that time both Obalappa and his assailants had disappeared, though there were marks of blood on the ground. Five days later, on information received by the Police, his dead body was discovered buried in ~~a~~ a wet land belonging to the 8th Accused Abdulla Sab, under a foot of water, & with marks of injuries pointing clearly to death by foul play.

MGCPB—10,000—31-8-04.

Serial No.

The eye-witnesses above mentioned have identified the other eight Accused as present at and taking part in the murder. There is also evidence to show that most of these men were observed at the scene of the occurrence a few minutes before the attack. Six of them admitted having attended a pic-nic that day very near the cock-fighting place. One of them [the 9th Accd & the 4th Memorialist] absconded after the murder, and was found a few days later at Jangamkote in the house of a Gosha female, on information given by the boy Kyder Sab whom he had been keeping under restraint. Most, if not all, of the actual participators in the crime are closely related to the 6th Accd Abdulla Sab, a bitter enemy of Obalappa, and who, though not physically present at the spot, was (from enigmatic messages which he sent & received, from his attempting to keep off two of the eye-witnesses out of the way, & other circumstances) suspected of being also concerned as an abettor besides being the person chiefly interested in the accomplishment of the murder.

MGCPB—10,000—31-8-04.

G.R.S. 12]
General and Revenue Secretariat.

File No. 119 of 1904-05

Serial No.

On this evidence, the Sessions Judge of the Bangalore Division found Abdulla Sab guilty of abetment of murder, and the other eight persons guilty of murder. In passing sentence, the Judge observed: "The murder was "committed in cold blood and in broad "daylight, after mature deliberation "and settled plan and in a most "reckless and revengeful spirit, and "there are no circumstances of any "kind to extenuate the guilt of the "accused." Except the 7th Accd who, in consideration of his youth, was awarded transportation for life, all the rest were sentenced to death.

On appeal, the Chief Court found that, though the facts urged against Abdulla Sab were consistent with his being concerned in the murder, yet they were not evidence of abetment against him; and they therefore acquitted him.

As regards four others (4th, 5th, 6th & 7th Accd), notwithstanding that there was evidence against them which, according to the learned Judges, did not bear any stamp of fabrication, yet, inter alia

MGCPB—10,000—31-8-04.

G.R.S. 12]
General and Revenue Secretariat.

File No. 119 of 1904-05

Serial No.

of the persons who were brought to the scene of the murder from the cockle-fishing place did not recollect hearing the names by these four deceased mentioned by the eye-witnesses, the Chief Court thought, "though with considerable hesitation," that they should be acquitted.

The conviction of the remaining four, namely Jeno Sab, Abdul Karim, Abdul Rahim and Jaffur, was upheld; the death sentence being confirmed in the case of the two first, but commuted to transportation for life in the case of the other two in consideration of their comparative youth.

It is these four that have now submitted this memorial to His Highness the Maharaja. The memorial set forth a long list of alleged discrepancies and improbabilities in the prosecution evidence; but all these points were doubtless fully argued before, and carefully considered by, the Chief Court. No fresh circumstances have been brought forward to show why the sentences passed on the

I have also been unable to find that any fact has been brought forward which in my opinion can be held to constitute a case of merit meriting mercy. 18.10.1904

MGCPB—10,000—31-8-04.

Serial No.

prisoners should in any way be interfered with

Mr Chandravarkar
18th Oct 1904.

Sec'y.

10
Submitted to the Dewan Saheb thro' the Councillor
&
18/10/1904

867
18-10-04
Mysore

11/10/1904

11 In my humble opinion there are no grounds for interference & they accordingly suggest that the memorial be rejected.

C Seshadriengar
19-10-04

&
19.10.1904

23
20
23-10-04

11/10/1904

7

1197-04-05

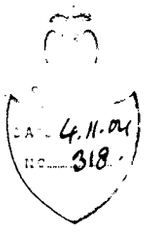
Submitted to His Highness.

12 This is a notorious case -
the memorialists well
deserve the punishment
inflicted upon them
My humble advice is that
the memorial may be rejected

3.XI.04

8 1199-04-05

Record of Case submitted for the orders of His Highness the Maharaja.



Subject.

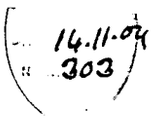
13 Memorial of Gows Sab and3otners, appellants in Criminal appeal case No.216 of 03-04 on the file of the Chief Court, praying for the remission of the sentences passed upon them.

Order.

14 I See no reason to interfere.

KRW

9/11/04



orders issued

10. XI. 04

Draft made & 15/11/04

15/11/04

G.R.S. 12]

General and Revenue Secretariat.

File No. 119 of 1904-05

Serial No.	
15	Draft Sanad with a view to replacing a draft Register of the Chief Court in terms of the order of the Maharaja.
	15/11/04.
	Model Royal draft, to be passed by the
	15-11-04
	Submitted to the Diwan Sahib
	17.11.1904
	17
2762 17.11.04	17 Done
2	To the Registrar of the Chief Court No. J 1302/C115-2 of the 21st November 1904.
	Forwards for information of the Judges of the Chief Court & for Communication to the memorialists Copy of order passed by H.H. the Maharaja dealing with

NOTE—Contn. sheet.

MGCPB—10,000—31-8-04.

111 Dated 1904 (Courts)

Urgent

Secret No. 1

J 884
4.20 p.m.

Bangalore, 14th October 1904

No 2327 two
131
and records — From

V. A. Rajaratna Mooty Esqr:
Registrar, Chief Court of Mysore

To: B. K. Venkataraadiengar Esqr:
Secretary to Government,
Genl: & Rev: Departments.

Sir,

I am directed to forward a memorial addressed to H. H. the Maharaja by 1 Ismail Sab, 2. Abdul Kareem 3 Abdul Gaffur and Abdul Rahim accused 1, 2, 3 and 9 in Kolar Sessions Case no. 19 of 1903-04 on the file of the Sessions Judge of Bangalore and Appellants 1, 2, 3 and 9 in Criminal Appeal Referred Case no. 216 / no. 11 of 1903-04 on the file of this Court.

The Sessions Judge of Bangalore has been directed to suspend the sentence of death passed on the 1st and 2nd memorialists pending disposal of their memorial.

The entire record in the case is

herewith

To

His Highness the Maharaja

OF MYSORE.

The Humble Memorial of (1) Gows Saib, (2) Abdul Karim, (3) Abdul Gaffur, and (4) Abdul Rahim, Convicted under Section 302 of the Indian Penal Code in Criminal Appeal No. 216 of 03-04, on the file of the Chief Court of Mysore, now in the Central Jail, Bangalore,

Respectfully Sheweth,

(1). That Your Highness's first and second humble memorialists Gows Saib and Abdul Karim have been sentenced to suffer the extreme penalty of the law—death—on the 28th instant (28-10-04.)

(2). That Your Highness's third and fourth humble memorialists have been sentenced to transportation for life.

(3). That they have been sentenced on the evidence of the 2nd, 4th, 5th, 6th, 8th, 9th, 11th and 14th witnesses for prosecution.

(4). That all the witnesses have given false evidence against Your Highness's humble memorialists.

(5). That while 2nd prosecution witness Ramappa says, "Venkatappa (4th prosecution witness) threw a stone on the persons that were beating my father; the 9th accused came upon and threw a stone at me; it grazed on my leg; I was not hurt; it was of the size of a wood-apple" (page 18, lines 4 to 8); Venkatappa (4th prosecution witness) states "I did not beat any of the assailants; I do not remember whether I threw any stones on any of them, (page 24, lines 46 to 47), I do not know whether they (assailants) threw stones when I was running away or not." (page 27, lines 53 to 54).

(6). That the 2nd and 4th prosecution witnesses are respectively the son and brother of the deceased (page 14, line 10, page 210, lines 27 and 28, and page 228, lines 27 and 28).

(7). That that the evidence of the 5th prosecution witness Haidar Saib is absolutely false may be seen from the following facts:—

(*a*) That Hydar Saib is said to have been taken by Abdulla Saib, (father of Your Highness's 3rd and 4th humble memorialists) while he was sitting with Medar Earappa and others (page 34, lines 10 to 14) none of whom has been examined. Although Modeen Saib, father of the 5th prosecution witness, and 15th witness for prosecution, was told by Earappa (page 61, lines 5 to 6) that his son had been taken by Abdulla Saib, he did not go to Abdulla Saib's house in search of his son (page 61, lines 9 to 10), but searched for him 2 or 3 days elsewhere avoiding the very place where he could find him (page 60, lines 18 to 19).

(*b*) That the 5th prosecution witness makes contradictory statements as to the place he occupied when the deceased was beaten (page 32, line 45 to page 33, lines 1 to 2 and page 37, lines 3 to 6).

(*c*) That the 5th prosecution witness swears that he was confined at Seethanayakanapalli, (page 35, lines 14 to 18). He is contradicted by Rahim Beg, 13th prosecution witness, (page 57, lines 4 to 6).

(*d*) That that the 5th prosecution witness who is 16 years old (page 29, line 5) walked 45 miles, (page 96, lines 15 to 18), without food, (page 35, lines 48 and 51) during a period of 28 hours (page 35 lines 41 to 42 and page 36, line 12), not knowing whether he had a drink of water from a well or tank, (page 35, line 47) is wholly unreliable.

(*e*) That the name of the 5th prosecution witness does not appear in Exhibits G and H (pages 209 to 211), although he had been known to the 2nd prosecution witness as Mohadin Saib's son, for one year (page 16, lines 32 to 33, page 299, lines 1 to 4, page 25, lines 14 to 15, and page 20, lines 2 to 6). This false witness (5th prosecution witness) was introduced by the Assistant Superintendent of Police, and Inspector Dade Row, investigating officers in the case—(page 253, lines 15 to 42, and page 255, lines 29 to 44). Nor does his name appear in Exhibit E, (page 205, lines 15 to 48).

(8). That the evidence of the 6th prosecution witness is also false for the following reasons :—

(*a*). That his name does not appear in Exhibits G. H. and E. (pages 209 to 211, and page 205, lines 15 to 48).

(*b*). That when Ramappa, 2nd prosecution witness gave his statement to the Police, Exhibits E and G, he knew the residence of the 6th prosecution witness (page, 38. lines 27 to 36), and also his name (Page 39, lines 51 and 52); and the 4th prosecution witness knew his name when he gave his statement, (page 25 lines 19 to 24).

(*e*). That it cannot be presumed that the Police persistently avoided recording the names of the 5th and 6th prosecution witnesses while, at Jinkalwarapally, they recorded the names of Peddanna and Venkatappa, the 8th and 9th witnesses for prosecution, whose evidence was of much less importance (Exhibit E. page 205, line 34, and page 299, lines 1 to 4).

(*d*). That the 6th prosecution witness, though young, is a clever liar. He utters falsehood deliberately in connection with the person to whom the said Abdulla Saib (8th appellant) spoke about his departure, and he deliberately withdraws what he stated in the lower court about his uncle being spoken to by Abdulla Saib, and his uncle accordingly advising him and his mother to leave the village, and accompanying them to Hospet and Yerkalvai, a distance of 6 miles. (page 38, lines 10 to 16, page 40, lines 9 to 14, page 225, lines 39 to 40, and page 226, lines 1 to 5, also page 40, lines 16 to 27, and page, 226 lines 1 to 4.)

(*e*). That this false witness also was introduced by the Assistant Superintendent of police, 1st witness for prosecution and Dada Row 35th witness for prosecution. (page 253, lines 15 to 42, and page 255, lines 29 to 44).

(9). That the 8th and 9th prosecution witnesses also have given false evidence. While the 8th prosecution witness states that he carried a fowl for fight, that he did not let it fight, that he took it home, that his brother, the 9th prosecution witness, came to his village and accompanied him from thence to the cock-fighting place, that he met him at the Chavady of his village, (page 44, lines 4 to 8), that Rama one of the sons of the 9th prosecution witness, Peddanna, accompanied them (page 44, line 33), that Peddanna's children returned earlier, (page 45, line 11) and that the son of the 9th prosecution witness remained with him in his house, Peddanna returning home alone (page 46. lines 4 to 6), the 9th prosecution witness Peddanna contradicts all these statements (pages 24 to 27 and page 48. lines 1 to 4).

(10). That the 11th prosecution witness pays a kandayam of only Rs. 2-8-0 for the lands that he and other members of his family cultivate (page 51,

lines 36 to 40). He goes ten miles (from Sunnakal to Madanapalli) for a cooly of 2 annas (page 53, lines 32 to 35). He stands isolated and his evidence is uncorroborated. He is one who can swear away a man's liberty or life for five rupees.

(11). That the 14th prosecution witness is an enemy of the family of Your Highness's humble memorialists. (page 59, lines 3 to 24).

(12). That the 11th and 14th prosecution witnesses are said to have seen Your Highness's humble memorialists at the scene of occurrence almost at the same time (page 172, lines 33 to 37). Only one man can walk on the footpath through which these witnesses passed. (page 54, lines 4 to 5); yet these witnesses did not meet each other on the footpath although they were proceeding in opposite directions (page 58, lines 22).

(13). That if one should feel inclined to believe the evidence of the above named witnesses he would find on a careful perusal of the records that Your Highness's 2nd memorialist was not in any way concerned in the assault upon the deceased. Your Highness's 2nd humble memorialist had no reason to assault the deceased, nor any interest which could induce him to do so. When, as alleged by the prosecution, the 8th appellant, Abdulla Saib, questioned the 5th prosecution witness Hyder Saib, which of his people he had seen in the jungle, he said, " I told him that the 1st and 9th accused were in the jungle." (page 29, lines 39 to 42). Again in cross-examination, he says, " I did not know the 2nd accused," (page 32, line 22) and also he adds, " I did not see the 2nd accused." (page 32, lines 23 to 24), which latter quotation must mean either that he had *never* seen Your Highness's 2nd humble memorialist or that he had not seen him at the scene of occurrence.

(14) That it was only on the morning of the 8th of January 04 that the 2nd and 4th prosecution witnesses went to the Royalpad Police Station for the 1st time (Exhibits G and H, page 209, lines 35 to 37, and page 210 lines 44 to 45, and page 211, line 1).

(15) That in the very first statement given by the 2nd prosecution witness, the names of Your Highness's humble memorialists were not given. That statement was suppressed and Exhibit E was substituted with the names of Your Highness's humble memorialists and those of the 8th and 9th prosecution witnesses (page 246, lines 9 to 24, particularly lines 22 to 23).

(16) That the names of Your Highness's humble memorialists were for the first time introduced when the Amildar of Sreenivasapur who was an enemy of Abdulla Saib (page 252, Exhibit XI), and Inspector Dada Row, 35th prosecution witness, sat in deliberation for three hours (page 79, lines 26 to 30), as Your Highness's humble memorialists were believed to be the enemies of the deceased and they unfortunately happened to hold a picnic near the cock-fighting place.

(17) That if Your Highness's humble memorialists had intended to murder and murdered the deceased, they could have easily plunged, into his body, the knife they used in cutting sticks and despatched him easily (page 229, lines 10 to 12). That it is surprising that although many persons attacked the deceased at the same time, as alleged by the prosecution, not even a single stroke fell upon his body.

18. That the reasons assigned for disbelieving the evidence on behalf of Your Highness's 3rd humble memorialist are not satisfactory. The production of the letter of his father to Thamme Gowda, 13th witness for defence could not have improved the defence. Khadar Saib was not examined as he was a relation of Your Highness's 3rd humble memorialist (page 137, line 10) and the records would show that Lingaraj another attesting witness to the endorsement (Exhibit X (*a*) page 258, lines 39 to page 259, line 7) was not *served* with the summons issued for his attendance and was consequently not in attendance.

(19). That if the murder of the deceased had been premeditated, Your Highness's humble memorialists would not have shown themselves to hundreds of persons at the cock-fighting place.

(20) That having seen Your Highness's humble memorialists near the cock-fighting place, the deceased would not have gone through a dangerous foot-path at sunset, if he had not been quite sure that Your Highness's humble memorialists could not meet him in that footpath.

(21) That the complaint of the deceased against Your Highness's 1st humble memorialist was proved to be false by his (deceased's) own witnesses. Exhibit J. (page 153, lines 5 to 10), not printed in the printed records before the Chief Court, will support this statement.

(22.) That Your Highness's 4th humble memorialist did not abscond as alleged by the prosecution, but went to different places to collect Thangadi bark and money belonging to his father. (page 55, lines 36 to 40, and page, 56 lines 24 and 25).

(23) That it has been proved by prosecution witnesses and independent defence witnesses that Your Highness's 1st and 9th humble memorialists passed directly to the Mosque and that they did not go to the footpath, (Examination-in-Chief of defence witnesses 1 to 4 pages, 117, 120, 122, and 123).

(24). That it has been proved by the statement of Your Highness's 1st humble memorialist (page 104, lines 13 to 16,) and that of the 7th accused (page, 111, lines 26 to 27), and the evidence of the 1st defence witness (page 117, lines 11 to 12), 2nd defence witness (page 120, lines 15 to 16), 3rd defence witness (page 122, lines 1 to 2), and 4th defence witness, (page 123, lines 14 to 15), that Your Highness's 2nd and 3rd humble memorialists were not amongst those who were at the picnic or those who returned from thence.

(25). That the references are to be found in the printed records of the appeal to the Honorable Chief Court of Mysore.

For the foregoing reasons, Your Highness's humble memorialists pray,

(1). That this, their humble memorial may be graciously received,

(2). That the records of the case may be sent for and perused,

(3) that the sentence passed on them may be suspended pending the disposal of this, their humble memorial, and

(4) that the said sentence may be remitted, under the provisions of section 401 of the Code of Criminal Procedure.

For which act of mercy, Your Highness's humble memorialists will ever pray for the prosperity and happiness of Your Highness and the ancient Royal Family of Mysore.

S. Abdul Gabbour. Seal

Signed before me
Chief Jailer
Bangalore Central Jail.
6-10-06

In the Chief Court of Mysore at Bangalore.
Wednesday, the 21st day of September 1904.

Present

Hon'ble Justice A. E. Staley - Chief Judge,
and
Hon. Justice D. V. Ranjunidayyar - Judge.

Petition of Criminal Appeal
Criminal Referred
No. 216 of 1903-04 against
Case No. 11.
the conviction and sentence
by the Sessions Judge of Banga-
lore Division under Sections
302 & 109 & 302 I. P. C. in Kolar
Sessions Case No. 19 of 1903-04

Appellants
1. Gouse Sab
2. Abdul Kareem
3. Gaffar
4. Jamm
5. Hyder Sheriff
6. Souff
7. Azeem
8. Abdulla Sab
9. Abdul Raheem

Judgment

The eight accused Patel Gouse Sab, Abdul Kareem, Gaffar, Jamm, Hyder Sheriff, Souff Azeem and Abdul Raheem have been convicted of the murder of one Ablappa on the 7th January last. Gouse Sab is brother Abdul Kareem - son-in-law

Gaffur - son, Azeem - nephew, and Abdul Rakeem son of Abdulla Sale who has been convicted of abetting the murder by the other accused. The accused Jamun, Hyder Sheriff and Ismail are alleged to be relatives of Abdulla Sale also, but their relation is not clearly made out. All the accused have pleaded not guilty and have appealed.

Odlappa lived in Annagapett a village immediately south of Sunnakal or Jinkalwanapalli, to which the accused belong. It is admitted that the accused Abdulla Sale was on bad terms with Odlappa. The former admits that there was 'zid' or enmity between them. Abdulla Sale is a contractor for Government forest produce, and admits that Odlappa had complained implicating his people and that the complaints were

connected

connected with the forest department that the accused had to submit tenders for a contract of Sangadi bark before the 9th January, and tenders were to be made at Kolar, a place about 30 miles from Sirnakal on the 11th Janry. He admits that there enmity has been going on for two years the accused Gouse Sab avers that Ablappa had complained against him of embezzlement and other offences, and the matter was under inquiry and the witnesses were examined. A number of proceedings have been put in, proceedings before the Police, in the Magistrate's Court, and in the Government Forest department, to prove that Ablappa was at enmity with Abdul Ka and Gouse Sab and that Abdulla Sab ran a probable risk of losing his contracts or his right to bid for contracts

for

for Government Forest produce unless Ablappa were silenced. It is not, however, necessary to analyse the evidence about them; because disputes are admitted and the enmity is admitted.

The case for the prosecution is this:— On Thursday, the 7th January last, after breakfast, Ablappa with his son Ramappah aged about 14 years and his servant Venkatappah left their house to fight cocks at Rajamahanadhy, about 2½ miles west of Sunnakal. A number of persons from neighbouring villages had assembled there for the cock-fighting. They were Hindus, for it is contrary to the religion of Musalmans as accused are, to witness it. But the accused except Abdulla Sahib assembled for a picnic under a tree, by the main road side, a Couple of furlongs or so from the

Cock-fighting

Cock-fighting. At a time described as about two marroo, that is when the Sun was two fathoms high in the afternoon the mussalmans left with their cart south along the road, turning then by a cart road north-east round a hill homewards. When the sun had gone down one fathom more Oblappa started homewards by a path going east, accompanied by Ramappah and Venkatappah. On their way, Hyder Sale, a mussalman boy of 16 years, and Venkatgadoo a medar boy of about 12 years, joined them; that is the former was walking in front and the latter behind their party. The pathway lay through jungle among trees and stones. When they were about three-fourths of a mile from Jinkalwarapalli and had got down in a valley

the

the accused Abdul Rahim came from the side of the path and struck Oblappa with a club; and then the other accused except Abdulla Sab came and struck him. Oblappa fell. Venkatappah, Ramappah and the medar boy ran back to the cock fighting place. Hyder Sab ran away to a house in Jinkalwarapalli. On the cries of Venkatappah and Ramappah, some of the 20 persons still left at the cock fighting place came with them to the place of assault. When they arrived, they found Oblappah had disappeared, and could not on search be found. There was blood at the place of assault. Of those who accompanied them, two were the witnesses Peddamma and Patel Venkatappa. To these persons Ramappa and Venkatappa told

what

what had occurred and said then
recognized among the assailants
Gouse Sāb, Karim, Gaffur, Jamm
son of Sadat Khan and Abdul
Rahim according to Patr Venkaiy
pa; but according to Peddamman
pa; but they did not name Jamm. Ac
cording to both, they said there
were others with the accused
named. After this, according to
Ramiahpa, the party went back
to the road either the main roa
or the foot road, who not clea
which; from among the trees a
trees. Ramappa and Venkatāppa th
started for Royalpad Police Statio
some two or three miles north-west
of Rajamakalapalli Near that
way going across country and
reached Yelagur about 2 miles
from it. There they went to the
witness Kondakaya Venkataramam
uncle-in-law

uncle-in-law of Ramanna. According to that witness, Ramappa told him that the sons, son-in-law and brothers of the Seema Gunta Reddy, ie, Abdulla, and others beat and killed his father. Apparently the witness was not asked if Ramappa named them. The witness took them, ie, Ramappa and Venkatappa that night to the Royalpad Police Station but only Constables Rama Rao, Mallikarjuniah, Govindiah and other constables were there. It was then, this witness says late in the night, but he cannot give the exact hour. On Rama Rao's questions, Ramappa told him what had occurred and named according to Rama Rao, Gouse Sab Abdul Rahim Gaffur, Hyder Sheriff and Abdul Rahim as the assailants. Rama Rao with other Constables Mallikarjuniah

and

and Ahmed Khan, leaving Kondaya Venkatarawana, who was unwell at the Police station, accompanied Ramappa and Sr. Kalappa to the scene of crime. There they found no one, and did not see Oblappa, but marks of blood. Rama Row said Ramabbao father might have returned home and enquiries there were necessary. They went to Oblappas house, but his wife, the witness Kalammah said he had not returned home, and villagers said the same. Then Rama Row took his part to the Jinkalwara Palli Chavadi and took notes of what Ramappa had, both at the station and Jinkalwara Palli, told him The notes are marked E4 E. In these notes Gows Sab Abdul Rahim Abdul Karim Abdul Gaffer and Sheriff Khan are named; it being said

said that there were others also. The notes purport to be of Ramappa's statement at 1 P.m., but do not show where the statement was written or made. Ahmed Khan remained at the scene of crime. The rest of the party returned to the Police station at about cock-crow. Ramakrao thence sent Mallikarjuniah with Ramappa and Venkatappah to the Daffedar with the notes E to Mancharla Kota, to which the Daffedar had gone. As he was not there, they went on to Sreenivaspur, 18 miles from Royalpad and arrived there about 11 P.m and saw the Amildar. There the Inspector took down the statements of Ramappa and the Venkatappa by 2 or 2.30 P.m. The statements are Exs. G and H. In these statements Abdul Gaffur, Abdul Karim, Abdul Rahim, Govt

Sale

Sale, Jamma Gadu and Sheik Gadu are named and it is said there were three or four other assailants whose names were unknown but who could be identified. The Police inquiry then began

With regard to Abdulla Sale who is charged with abetment of the murder, of the other accused we are unable to find that there is sufficient evidence of such abetment. To constitute such abetment, it must be shown that he conspired with them in illegal them to, or aided them in furtherance of that murder No evidence has been adduced to show that he instigated to commit the murder. Others who refused to do it. There is evidence that he threatened repeatedly in presence of Ollappa's wife, the

witness

witness A Kalammah, to kill Odappa
the dead body of Odappa was, it is
proved recovered buried in a wet field
belonging to Abdulla Sale on the
12th January: and there is evidence
that, before it was found, Abdulla
Sale said the body was here &
and nothing could be done or
that he had buried the body and
it could not be found. There is
evidence that, after the murder
he got Hyder Sale and the medar
boy out of the way to prevent, obviously, their evidence being avail-
able at the Police inquiry There
is evidence that, on the 7th January
when at Kolar, Abdulla Sale sent
a Jatka man, the witness Nana
naikatta to Sunnakal with a
message to accused Abdul Rahim
that, if a certain business which
had been told him had been finished

the

the witness should bring Abdul Rahim
but otherwise, should get a letter
from Abdul Rahim, and the latter
on the 9th sent by witness a message
that the witness had been accom
plished His evidence is true,
so consistent with Abdulla Sale's abet-
ment of the murder of Ablappa by
the accused persons. But it is cer
tainly not evidence of the abet
ment, that is, that he conspired
with the other accused for the
murder, or instigated them to it,
or aided them to further the murder.
The evidence of the message is
too vague for any inference to
be drawn from it. The other
evidence shows that Abdulla
Sale hated Ablappa, and desired
to get him killed, and aided the
murderers after he was killed.
It is possible that Ajoo Sale
and his companions finding

then

their opportunity, killed Abdullah in the absence of Abdulla Sali who was admittedly at Kolar on the 7th January without any abetment of the latter and the latter after the murder approved of it. The evidence noticed is consistent with this possibility, and therefore no evidence of Abdulla Sali's abetment of the murder by the other accused. We think therefore that we must acquit Abdulla Sali.

A great deal of the argument on appeal has

has been directed to the
notice of Rama Rao Ex
E and the first intimation
Ex G. He pointed out that
the original statements
of Ramappah and
Venkatappah were made
on the 8th (Vide Exs. G. H
and P) that they went
to Royalpad Police Station
with Venkataramana
at cock crow on the
9th and not as they
now say in the night
returning after visiting
the scene of crime
with

with the Police to the station again at about dawn It is also pointed out that Ex E does not refer to the arrest by Peddappa and Patre Ve Ekāppa and some others from the cock fighting place of the scene of crime; and that the statements E, G, H, P of Ramappa and Veerabāppa on the 8th January do not mention the presence of the boys Snyder Sab and the Medar at the time of the scene of crime - It is urged that Ex E is a fabrication subsequent

to

to Ex: G to support the latter and that the evi-dence of the four witnesses referred to has been fabricated subsequently to support the case for the prosecution and the first information Ex: G. It is also suggested that, if Ramasbah and ven Catappah did go to the rouce station on the night of the 7th January, their information was never suppressed. There is of course nothing to support this last contention. As for the rest of the arguments we have given them our close attention but we are satis-fied that they are not sound. If Ramasbah desired to fabricate the notes Ex: E it was as easy for him to say that he made it when Ramappah first came to the Police Station as to say that he made it when after visiting the scene of crime with Ramappah from what Ramasbah had first said at the Police Station and what Ramappah said when

Rama

Rama Rao wrote them down. It was in fact easier for him to do so. The Police do not write and the form of first information does not require them to write in the first information of important crimes, the names of witnesses whom the complainant observed at the time of crime; or numerous details. These are left to be ascertained by subsequent Police inquiry. On a comparison of the statements in the present case, it is impossible for us to believe that the notes Ex: E were fabricated, or that the four witnesses referred to were tutored falsely to support the information Ex: G. The reason is plain. In Ex: G six persons are named by Ramappah as assailants Abdul Karim, Abdul Rahim, Gaffer Gous Sab, Jannugadu and Sheriffgadu. Of these in Ex: E Jannu's name is omitted.

Peddanna

Peddanna omits not only yamas name but Sheriffs when stating those whom Ramappa and Venkatappa named before going to the Police station H. vedas. bon Vencatigadoo ran away as soon as he had seen three Muss-almans come; and he states he can identify no one. Hyder Sab. who was ahead of Oblappa's party, states that he at first saw Yamma and Abdul Rahim seated together. and Gous Sab and Esuff sitting together. that he went on looked round hearing a cry and saw them beating Oblap-pa and then all the accused came from their place of concealment and witness ran away It is evident that each witness has stated his own belief and impressions according to his memory and has not attempted to be consistent strictly with Ex G. There is no sign of

any

any fabrication in these statements. We think, however, though with considerable hesitation that since Peddanna can only recollect Gous Sab, Abdul Karim Abdul Rahim and Gaffur as named by Ramappah the other accused should be acquitted.

With regard to Gous Sab, Abdul Karim Abdul Rahim, and Gaffur, there is other evidence to be noticed. The witnesses Patre Venkatappah, Peddanna and Chennagadu depose that they saw these accused and others at the picnic near the cock fight. The evidence of Chennagadu deserves, we think, particular notice, for so far as the record shows, there was nothing to dis-credit his evidence in the Sessions Court, and no argument against the inde pendence of his evidence has been adduced here. His evidence shows, no sign of

tutoring

tutoring, for he states that he did not see the accused Azeem at the cockfight. He deposes that after the picnic party had left, he also left for Sunnekal and on the way he saw Gous Sab, Kareem, Gaffer, and Rahim sitting on the Ghat. Witness called them to go back to the village with him. They refused and said they would follow him That night the second accused Abdul Kareem came and engaged him as a Coolie and went to [illegible] house there while witness stayed for four days in his mother-in-laws house at Madanapalli which is ten miles from Sunnekal

There is some evidence in detail that accused Abdul Kareem absconded after the murder and was found on the 26th in the house of Mohsin Sab at Hoskote

over

Over 40 miles from Sunnekal disguised as a woman and that he was found there on the information of the witness Hyder Sab who was being kept out of the way of the Police at the same place. We do not think the evidence of much importance. It is consistent with the case for the prosecution, but it does not afford any direct evidence as to the guilt of this accused.

In evidence for the defence, and by the accused Gows Sab and Abdul Rahim, it was admitted that they were present at the picnic party. Witnesses were, however, adduced to prove that they came back with the whole party to Sunnekal direct, went to the mosque and read prayers and then went home. The only witness of the party who has been examined is Syed Hussain, husband of Abdulla Sab's own niece. There were three other Mussalman witnesses, but they merely saw, they say, the party coming to Sunnekal after 6 P.M.

The

The accused Abdul Kareem offered evidence to prove an alibi on the 7th January at Punganoor. He presented a petition of complaint there (Ex: 7) in the Court of the 2nd class Magistrate at Punganoor. His account is that he was at Madana Palli left it on the night of the 5th January and went to Punganoor, 15 miles from Madana Palli. On Thursday, the 7th January, when staying at the house of his sister-in-law former in Punganoor, he was abused by some one, whose name he does not know, bought a stamp that day and prepared a complaint. The Magistrate he says, was absent till Monday and accused says he posted the petition on Saturday or Sunday. There can be no doubt the evidence in defence for this accused is an entire fabrication. The accused states he posted the petition because the magistrate was absent for several days. His witness

Kotinal

Hotinal Silleman Sab states that he was with him, that witness told the Stamp Vendor the latter would be paid by witness for writing the complaint, and the Stamp Vendor wrote it on the day the stamp was purchased and the accused Abdul Kareem presented the complaint to the Magistrate who did not refuse to receive it. The Stamp Vendor deposes that he sold the Stamp on the 7th and wrote the Petition on the 8th January and that Hotenal Silleman Sab did not accompany accused but another Seleman Sab, a Jamedar The evidence is obviously quite false.

The defence of Gaffer is that, on the morning of the 4th January, he went from Sunnekal with a deed and letter to Thammē Gowda of Muthkoor about 30 miles from Sunnekal to realize money due on the bond; and that Thammē Gowda

paid

paid him 209 Rs. on the night of Thursday the 7th January last, accused returning home next day. We consider the evidence of the date of the endorsement of payment of bond to be a fabrication. Of four witnesses to the endorsement three have not been examined at all, nor their absence explained. Of the other two one Syed Jaffar does not depose to the date. He only states that payment was made the day the endorsement was written. The other Venkatasami only states that someone unnamed ascertained the date from a anchangam (calendar) Thamme Gowda states that it was the accused Gaffer who wrote the endorsement, but whether the date was correct to the witness' knowledge he does not say. The witness has not adduced the letter of Abdulla Sab which would corroborate the case of Gaffer if true though he admittedly has it. He states he has not been summoned to produce it. We think, therefore, that either if

produced

produced, it would not support the defence or that there is no such letter and the evidence has been fabricated since the confinement of Abdulla Sab, when he could not furnish a letter to corroborate the defence.

Neither Abdul Kareem nor Gaffer before the committing Magistrate set up the defence of abili which they now set up We do not believe any of the evidence in defence.

The medical evidence shows that when the body of Oblappa was examined five days after death, there were seven wounds on the head, accompanied by fracture of the skull causing death. The fact that they were all upon the head sufficiently shows that the intention of the assailants was to kill.

The learned Sessions Judge of Bangalore has written a very long and careful

Judgment

Judgment in this case and we do not think necessary to dis-agree with his remarks upon the evidence except as to the Pleader Witnesses Dheema Rao and Nageswara Iyer. The learned Sessions Judge has observed that they were taken by the 8th accused Abdulla Sab on his return from Kolar on the 8th January to the Police inquiry on business of rather a shady character and that it is by no means unlikely that their vice was sought on matters such as the disposal of the body or escape of those near and dear to Abdulla Sab. We find nothing on the record to justify these remarks. On the other hand their evidence shows that no opposition was made to their warning the inquiry on behalf of Abdulla Sab. that they found no reason to suspect anything wrong; that they found the Police did not exceed their duties o give any cause for apprehension and that one at least of them left after two days

after

upon relying Abdulla Sab to plead for him if there should be any injustice. There could hardly be better evidence than that of Abdulla Sab's own pleaders to show that the Police inquiry was properly conducted and the allegations made against M are untrue.

We convict Gous Sab and Abdul Kareem of an offence under Section 302, Indian Penal Code and sentence them to death.

We convict Gaffur and Abdul Rahim of an offence under Section 302 I.P.C. On account of their youth, Gaffur being only 18 and Abdul Rajeem 21 years old, we sentence them to transportation for life, remitting the penalty of death.

A true copy

Registrar

Copy applied for by prisoners Gous Sab and Abdul Kareem thro The Supt Central Jail — 30-9-04

Copy ready — 3-10-04

Copy despatched — 3-10-04

Registrar

Mhw

Secretariat 2.

Criminal Records

No. J/1302
C 11 9-2

MYSORE GOVT. GEN. & REV. SECRETARIAT.

Dated Bangalore....21/11/1....1904

From

The Secretary to the Government of H. H. the Maharaja of Mysore.

To

The Registrar of the Chief Court of Mysore.

SIR,

I am directed to forward herewith for information of the Judges of the Chief Court and for communication to the prisoners Gous Sab, Abdul Kareem, Abdul Gaffur & Abdul Rahim undergoing sentences of death and transportation for life in the Bangalore Central Jail, copy of order passed by H. H. the Maharaja of Mysore, on the prisoner's memorial praying for remission of the sentence passed on them

2. The entire records received with your letter No. 2327/131 dated the 14th October 1904 are herewith returned.

22-11-04

I have the honor to be,

SIR,

Your most obedient servant,

Secretary.

15/11/04
22/11/04

Copd: V.R.K. 21-11-04

Encds: KM 21-11-04

36 Draft

In the Matter of a Memorial

addressed to His Highness the Maharaja by Gowd Sab and 3 others appellants in Criminal Appeal case No. 216 of 03-04 ~~Referred case~~ No. 11 of 03-04 on the file of the Sheristadar Court praying for the remission of sentences passed upon them

His Highness the Maharaja

has been pleased to pass the following

Order.

" I see no reason to interfere

2761

Dewan